



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption to Daimler Trucks North America (Daimler) for nine of its commercial motor vehicle (CMV) drivers, identified below. Under this exemption, the nine drivers are not subject to the commercial driver's license (CDL) requirements and therefore are exempt from the requirements of the Agency's drug and alcohol regulations. This exemption will permit the Daimler drivers to test-drive Daimler vehicles on U.S. roads to better understand product requirements in "real world" environments, and verify results. FMCSA reviewed the drivers' commercial license records provided by Daimler, and believes the requirements for a German commercial license, the work restrictions imposed on Daimler drivers because of nonimmigrant visa requirements, and the terms and conditions set forth below will ensure that Daimler's operation, under this exemption, will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: The exemption is effective [Insert date of publication in the FEDERAL REGISTER] and expires [Insert date 5 years after date of publication in the FEDERAL REGISTER].

ADDRESSES: *Docket:* For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the

ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente; FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-4325; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2012-0032” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Current Regulatory Requirements

Under 49 CFR 383.23, no person subject to the CDL requirements shall operate a CMV unless such person has taken and passed certain knowledge and driving skills tests. Such drivers are also subject to the controlled substances and alcohol testing requirements of 49 CFR part 382, including the Drug and Alcohol Clearinghouse (Clearinghouse) requirements set forth in 49 CFR part 382, subpart G.

The Clearinghouse is a central repository of drivers' drug and alcohol program violations. Under the Clearinghouse regulations in 49 CFR part 382, subpart G, employers are required to query the system to determine whether current and prospective employees have incurred a drug or alcohol program violation that would prohibit them from performing safety-sensitive functions as defined in 49 CFR 382.107. Additionally, employers are required to report driver drug and alcohol program violations to the Clearinghouse.

IV. Applicant's Request

Daimler has requested an exemption from 49 CFR 383.23, which states that no person may operate a CMV, as defined in 49 CFR 383.5, until passing the applicable knowledge and skills test necessary to obtain a Commercial Learner's Permit (CLP) or

CDL. Daimler further requested an exemption for the nine drivers from the Clearinghouse requirements of 49 CFR part 382, subpart G, stating that, for a driver to register and for a motor carrier to conduct full/limited queries and/or report violations to the Clearinghouse, a valid State-issued CDL number is required.

The following drivers would be covered by the exemption: Manfred Wilhelm Guggolz, Thorsten Sascha Kugel, Steffen Keppeler, Lars Nock, Jorg Wolfgang Spielvogel, Frank-Michael Kircher, Jochen Hans Horwath, Dominik Cammerer, and Carsten Schewe. Each of these drivers has a valid German commercial license. The exemption would allow these nine drivers to operate CMVs in interstate commerce to support Daimler field tests to meet future vehicle safety and environmental regulatory requirements, and to promote the development of technology advancements in vehicle safety systems and emissions reductions. Daimler stated that the drivers would be in country for no more than six weeks per year.

V. Method to Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if these drivers had a CDL issued by one of the States. Daimler explained that the drivers are familiar with the operation of CMVs worldwide and would be accompanied at all times by a driver who holds a State-issued CDL and is familiar with the routes to be traveled. Additionally, Daimler provided statements of driving history for each of the nine drivers. Daimler also stated that the drivers would comply with the requirements of the drug and alcohol program, with the exception of the Clearinghouse requirements, to ensure safety equivalency.

VI. Public Comments

On December 9, 2020, FMCSA published notice of the Daimler application and requested public comments (85 FR 79260). The Agency received one comment from a

private citizen; Mr. Mark Whelan, who questioned why the Daimler drivers should not be required to obtain a State-issued CDL and undergo drug testing.

VII. FMCSA Decision

FMCSA has determined that the process for obtaining a CDL in Germany is comparable to the process for obtaining a State-issued CDL and therefore adequately ensures the drivers can safely operate a CMV in the United States.

Under this exemption, the Daimler drivers would not be subject to the drug and alcohol testing requirements, set forth in 49 CFR part 382, which apply only to drivers who are subject to the CDL requirements in 49 CFR part 383, the Canadian National Safety Code, or the Licencia Federal de Conductor (Mexico), and to their employers (49 CFR 382.103(a)). Therefore, to ensure a likely equivalent level of safety, the terms and conditions of this exemption require that Daimler implement a corporate drug and alcohol testing program substantially equivalent to the testing requirements in part 382. FMCSA determines that because the Daimler drivers are not subject to 49 CFR part 382, an exemption from the Clearinghouse requirements in subpart G is unnecessary.

Based on the information provided by Daimler, as described in section IV, including the drivers' experience and safety records, FMCSA concludes that the exemption, subject to the terms and conditions set forth in section VIII, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1).¹

VIII. Terms and Conditions for the Exemption

¹ FMCSA has granted Daimler drivers similar exemptions: July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742); and September 28, 2020 (85 FR 60782).

This exemption applies only to the following Daimler drivers: Manfred Wilhelm Guggolz, Thorsten Sascha Kugel, Steffen Keppeler, Lars Nock, Jorg Wolfgang Spielvogel, Frank-Michael Kircher, Jochen Hans Horvath, Dominik Cammerer, and Carsten Schewe. These drivers are granted an exemption from the CDL requirement in 49 CFR 383.23 to allow them to drive CMVs in the United States without a State-issued CDL. Consequently, the drivers are not subject to the requirements of 49 CFR part 382, including the Clearinghouse requirements in subpart G. When operating under this exemption, the Daimler drivers are subject to the following terms and conditions:

(1) The drivers and Daimler must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR parts 350-399);

(2) The drivers must be able to provide this exemption document to enforcement officials;

(3) The drivers must be in possession of a valid German commercial driver's license;

(4) The drivers must be employed by Daimler and must operate the CMV within the scope of their duties for Daimler;

(5) At all times while operating a CMV under this exemption, the drivers must be accompanied by a holder of a State-issued CDL who is familiar with the routes traveled;

(6) Daimler must notify FMCSA in writing if any of these drivers is convicted of an offense listed in § 383.51 or a disqualifying offense under § 391.15 of the Federal Motor Carrier Safety Regulations; and

(7) Daimler must implement a drug and alcohol testing program substantially equivalent to the applicable requirements in 49 CFR part 382, subparts A-F, and require that the drivers be subject to those requirements.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, Daimler must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the Daimler drivers while operating a CMV under the terms of this exemption. The notification must include the following information:

- a. Identifier of the Exemption: “Daimler;”
- b. Name of operating carrier and USDOT number;
- c. Date of the accident;
- d. City or town, and State, in which the accident occurred, or closest to the accident scene;
- e. Driver’s name and license number;
- f. Co-driver’s name (if any) and license number;
- g. Vehicle number and state license number;
- h. Number of individuals suffering physical injury;
- i. Number of fatalities;
- j. The police-reported cause of the accident, if provided by the enforcement agency;
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

1. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

IX. Termination

FMCSA has no reason to believe the motor carrier and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson
Deputy Administrator

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